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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KATE MCLELLAN, TERESA BLACK,  
DAVID URBAN, ROB DUNN, RACHEL  
SAITO, TODD RUBINSTEIN, RHONDA  
CALLAN, JAMES SCHORR, BRUCE  
MORGAN, and AMBER JONES, Individually  
and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

JUDITH LANDERS, LISA MARIE BURKE,  
and JOHN MOLENSTRA, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

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Case Nos. 16-cv-00036-JD; 16-cv-00777-JD

**PLAINTIFF'S MOTION FOR LEAVE  
TO FILE A SUR-REPLY IN  
OPPOSITION TO MOTION TO STRIKE  
CLASS ALLEGATIONS**

Date: May 31, 2018

Time: 10:00 a.m.

Ctrm: 11, 19th Floor

The Honorable James Donato

Pursuant to Civil Local Rule 7.3, Plaintiff Dunn hereby seeks leave to file a two-page sur-reply addressing new material facts relevant to Fitbit's Motion to Strike Class Allegations (Dkt. 124).<sup>1</sup> As discussed further in the proposed sur-reply, attached as Exhibit 1 hereto, after the briefing on Fitbit's motion to strike concluded, Fitbit unilaterally terminated a non-opt-out Plaintiff's arbitration in attempt to nullify Plaintiff Dunn's argument that the motion to strike was premature. This improper conduct exposes the unfairness of Fitbit's tactics and undermines this Court's order that non-opt-out Plaintiffs' arbitrability defenses "must be considered by the AAA arbitrator." *See* Dkt. 114 at 8. Plaintiff Dunn respectfully seeks leave to file the attached sur-reply addressing this new development.

Respectfully submitted,

Dated: May 22, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Jonathan D. Selbin  
Jonathan D. Selbin

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<sup>1</sup> Plaintiff is mindful of the Court's Standing Order for Civil Cases which, referencing Civil Local Rule 7-3(d), provides that "[s]ur-replies are not permitted." Civil Local Rule 7.3, in turn, provides that, with limited exceptions, no supplementary materials may be filed "without prior Court approval." Plaintiff therefore seeks the Court's approval before filing any sur-reply.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 22, 2017, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Jonathan D. Selbin  
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